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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CRANE BOULEVARD SAFETY COALITION, an unincorporated association, Petitioner vs. CITY OF LOS ANGELES, a municipal corporation, Respondent(s)	Case No. 23STCP02375 **VERIFIED FIRST AMENDED PETITION FOR WRIT OF MANDATE** [California Environmental Quality Act ("CEQA"), Public Resources Code, sections 2100 et seq., Mount Washington/Glassell Park Specific Plan, California Constitution, art 1, section 7, Fair Hearing, Code of Civil Procedure, section 1094.5, Declaratory Relief, Code of Civil Procedure, section 1060]
RACHEL FOULLON; IAN COOPER, and ROES 1-25 Real Parties in Interest	*Assigned for all purposes to:* *Honorable Maurice A. Leitner* *Department 54* *Action Filed: July 7, 2023*

Petitioner, CRANE BOULEVARD SAFETY COALITION ("Petitioner" or "Association"), alleges through this Verified First Amended Petition for Writ of Mandate as follows:

1. This case challenges certain patterns and practices of Respondent, City of Los Angeles ("City") that prejudicially impaired the constitutional fairness of the land use hearing conducted by the City Council. Under California constitutional case law, all property owners and tenants, and land use appellants within the potential impact area of a real estate development project are entitled to notice of each quasi-judicial hearing conducted by the City, a right to be meaningfully heard at the hearing, and to be free of any biased decision maker or process where the decision making occurs outside the required land use appeal hearing. As a result of City patterns and practices that were applied to the particular case here, the Petitioner, as land use appellant, and representing constitutionally affected persons supporting Petitioner, were denied a California due process and fair hearing.

2. This case also challenges certain patterns and practices of the City to fail to enforce the plain language of the Mount Washington/Glassell Park Specific Plan ("Specific Plan") and Los Angeles Municipal Code ("LAMC") that requires the City to gather sufficient information regarding the lot size, the slope of the lot, and the actual dimensions of the building proposed for construction, all in order to accurately determine and apply the most restrictive floor area ratio calculation, consistent with fundamental General Plan, Specific Plan, and municipal code policies, programs, and requirements. As a result of the City patterns and practices applied in this case, the City failed to lawfully restrict the floor area ratio and independently verify the actual building dimensions on the project plans, and such prejudicial conduct violated both the LAMC and the Specific Plan.

3. This case also concerns the proposed development of a house project located at 464-466 Crane Boulevard, Los Angeles, CA ("Project"). According to one hearing notice issued by the City, the Project involves the "construction, use and maintenance of a new, three (3)-story, 45 feet in height, 3,633-square foot single-family dwelling with a 533-square foot

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attached garage, on an 8,914.1-square foot vacant lot." The Project is located on a never-before developed steep hillside in the named community of Mount Washington.

4. The escarpment area, including the two subdivision lots that solely constitute the boundaries of the Project site processed by the City, is part of a State of California mapped Earthquake-Induced Landslide Zone, a High Fire Hazard Severity Zone, and takes access from a degraded Substandard Hillside Street that runs along the crest of the hill where the Crane escarpment is located. Unlike the properties immediately adjacent, the particular lots at issue have remained undeveloped due to the severe slope, unsupported soil characteristics, and the problematic challenges to safely construct at this particular location.

5. The vacant site is home to rare species, the Southern California Black Walnut, that is part of open space along the Crane Boulevard escarpment. There are state trustee agencies with jurisdiction over resources on or immediately adjacent.

6. The City's review of the Project was materially deficient related to the eligibility of the Project to qualify for a Categorical Exemption from the California Environmental Quality Act ("CEQA"). Therefore, judicial review of the City's actions is necessary to assure full compliance with legal requirements.

THE PARTIES

7. Petitioner is an unincorporated association whose purpose is to promote the social welfare and environment in the hills of Northeast Los Angeles and in the area of the Mount Washington/Glassell Park Specific Plan, including along Crane Boulevard which is a substandard street that provides critical ingress and egress from a particularly steep escarpment on the north and east facing slopes of Mount Washington. Petitioner and those in the community who are affected by the Project, including its cumulative impacts in conjunction with other projects in Mount Washington and Glassell Park, have a direct and substantial beneficial interest in ensuring that the City complies with laws relating to environmental protection and land use. Petitioner and supporters are adversely affected by the City's failure to comply CEQA in approving the Project. Petitioner has standing to assert the claims raised in

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this Petition because Petitioner and its supporters' aesthetic, land use, and environmental interests are directly and adversely affected by Respondent's' approval of the Project.

8. Respondent City of Los Angeles is a charter city incorporated under the laws of the State of California. The City is the lead agency under CEQA.

9. Real Parties in Interest, Rachel Foullon and Ian Cooper are the owners of the two lots at 464-466 Crane Boulevard that constitute the Project site applied for and analyzed by the City. They are hereinafter referred to as "Real Parties" or "Developer."

10. Petitioner is ignorant of the true names and capacities of Real Parties sued herein as ROES 1-25, inclusive, and therefore sues these Real Parties by such fictitious names. Petitioner will amend this Petition to allege the true names and capacities of fictitiously named Real Parties in Interest. Petitioner is informed and believes and thereon alleges that each Respondent designated herein as a ROE has some responsibility for the events and happenings alleged in this Petition.

JURISDICTION AND VENUE

11. This action arises under CEQA and its implementing regulations, which are prescribed by the Secretary of the California Resources Agency to be followed by all state and local agencies when undertaking projects subject to CEQA. (Pub. Resources Code§ 21000 et seq.; Cal. Code Regs., tit. 14, § 15000 et seq.) This Court has jurisdiction over the matters alleged in this Petition pursuant to Code of Civil Procedure section 1085, and Public Resources Code section 21168.5. In the alternative, this Court has jurisdiction pursuant to Code of Civil Procedure section 1094.5 and Public Resources Code section 21168. This Court also has jurisdiction over matters alleged in this Petition pursuant to Code of Civil Procedure section 1094.5 Fair Hearing, LAMC sections 11.5.13, 12.21C(10), the Mount Washington/Glassell Park Specific Plan, and California Constitution, art. 1, § 7.

12. Pursuant to Code of Civil Procedure section 394(a) venue is proper in "the county in which the city or local agency is situated." Venue is proper in this Court because the City and the subject Project site is located in the County of Los Angeles.

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GENERAL ALLEGATIONS

The Floor Area Ratio Pattern and Practice

13. Prior to 1993, the year of enactment of the Mount Washington/Glassell/Park Specific Plan, hillside areas of Los Angeles had floor area limits that were regarded as too much for the steep terrain and narrow street infrastructure of hillside areas. Mount Washington and Glassell Park had particularly steep escarpments and degraded, narrow streets, and mansionization during the housing boom of the 1980s led to the appointment of an advisory committee to propose a specific plan. Consistent with the policies in the Northeast Community Plan to reduce densities in sensitive hillside and natural habitat areas, the committee recommended a floor area ratio ("FAR") calculation method that would scale as a smaller percentage of the lot as the lot size increased. Thus, in 1993, upon its enactment, the Specific Plan restricted FAR on hillside lots within its boundaries significantly more than the Hillside Ordinance regulations found in LAMC section 12.21A.17.

14. The Specific Plan, Section 2 is entitled "Relationship to Other Provisions of the Los Angeles Municipal Code." This title helps City Planners know that the rules in this section govern how the LAMC and Specific Plan are to be harmonized in their joint operation over projects reviewed under the Specific Plan.

15. The Specific Plan, Section 2A, provides in relevant part: "The regulations set forth in this Specific Plan are in addition to those set forth in the Los Angeles Municipal Code (LAMC), as amended . . . ." This subsection makes clear that the LAMC are the default regulations to apply to any project proposed in the Specific Plan area, unless modified by a particular provision of the Specific Plan.

16. The Specific Plan, Section 2B, provides in relevant part: ***"Wherever this Specific Plan contains provisions which require . . . more restrictive Floor Area Ratios, . . . or other greater restrictions or limitations on development than would be required by the provisions contained in the LAMC Chapter I, the Specific Plan shall prevail and supersede the applicable provisions of the Code."*** Thus, Section 2B directed City Planners applying the

LAMC and Specific Plan to compare the FAR calculation under LAMC 12.21A.17 (Hillside Ordinance) to the FAR permitted under the Specific Plan, and once those calculations were performed, whichever one was more restrictive as to permitted FAR would be applied to a project in the Specific Plan area.

17. By the mid-2000s, speculative development of oversized houses, particularly in sensitive and high fire risk hillside areas remained a problem. In 2011, the City Council enacted the Original Baseline Hillside Ordinance ("Original BHO") generally found at LAMC section 12.21C.10. The Orginal BHO applied to all hillside areas and introduced a new way to calculate allowed FAR based upon a slope band analysis. The more steep portions of the lot might be, the less FAR was permitted. However, the Original BHO contained a number of exceptions and addons that generally resulted in the Specific Plan's FAR limit still being more restrictive than that allowed by the LAMC under the Original BHO. So generally speaking, from 2011 to 2017, the City was correct in applying the Specific Plan's FAR calculation to a project because it remained the most restrictive FAR.

18. Because of the excessive exceptions and loopholes in the Original BHO, in 2017 the BHO was significantly amended. At that time, the definitions of floor area of a building were expanded, and most FAR exceptions were removed. The permitted FAR was still calculated using the slope band analysis method that reduces permitted floor area as the lot becomes more steep. The amended BHO is generally at the same location as the Original BHO: LAMC section 12.21C10.

19. Since the 2017 BHO amendments, and in particular on hillside lots with steep slopes, a comparison of the BHO slope band analysis often yields a more restrictive FAR than the calculation of the Specific Plan which is based simply on lot size. In accordance with this change, community residents noticed the City Planning Department not consistently requiring project applicants and their consultants to provide an analysis of both BHO and Specific Plan FAR calculations so that the more restrictive FAR could be applied.

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20. Petitioner is informed and believes, and thereon alleges that certain project expediters and developers interested in Mount Washington and Glassell Park began requesting or lobbying the City Planning Department to not require applicants to provide a calculation of both the BHO and the Specific Plan FAR. Petitioner is informed and believes, and thereon alleges that City Planning staff commenced simply applying the generally more generous Specific Plan FAR calculation to evaluation of project applications, not even determining if the BHO slope band analysis for a particular project site would allow less floor area to be built.

21. Through numerous land use cases reviewed by community residents, City Planners were observed offering differing and inconsistent reasons why the City Planning Department was refusing to require BHO slope band analysis as part of an application within the Specific Plan area. The City's refusal to apply the BHO in the Specific Plan area is a prejudicial failure to proceed in accordance with law.

The Architect's Summary FAR Calculation Pattern and Practice

22. As the City Planning Department's failure to enforce the BHO slope density FAR calculation in Mount Washington and Glassell Park became apparent, community observers also noticed that in reviewing project applications in the Specific Plan area, the City Planners were simply pulling the building FAR calculation from the architect's summary page on the front of project plans. By simply accepting the architect's summary, without checking its accuracy against the actual building dimensions pulled from the Project's plans, the City Planning Department's practice created another point of failure in the review of projects submitted for review and approval in a Specific Plan Compliance Determination by the Planning Director.

23. Petitioner is informed and believes, and thereon alleges that City Planners allow applicants and permit expeditors to submit plans where the actual building dimensions calculated from the project plans do not match the architect's calculation of floor area on the plans summary page, and this represents a potential institutional loophole for an applicant to obtain FAR he or she is not entitled to under law. Petitioner is informed and believes, and

thereon alleges that this is a pattern and practice of the City planning staff assigned to review projects for compliance with the Specific Plan. They do not undertake verification of the accuracy of the architect's calculations of FAR, and as a result, projects are at substantial risk of exceeding the FAR limits allowed by law.

24. The City's failure to perform or require the applicant to present verification of the FAR calculation on the architect's summary page is a failure to proceed in accordance with law because such a determination is a fundamental element of verifying that a project is in compliance with Specific Plan and LAMC requirements.

City Practices Place A Prejudicial Target on Mount Washington and Glassell Park For Excessive Development on Sensitive Hillsides

25. During the few years since the amendment of the BHO, the City's pattern and practices with respect to administration of the LAMC and Specific Plan in Mount Washington has led to housebuilders, expediters and speculators flocking to buy vacant land in the Specific Plan area and propose projects in the community at a rate much more intensely than the past. Petitioner is informed and believes, and thereon alleges that up to 150 projects are currently pending just in the Mount Washington area. Along the substandard, steep, winding, and rarely maintained Crane Boulevard in just the 300 and 400 block, the City has recently approved 8 projects, three of which are currently in construction with the cumulative impacts on the community of streets choked with construction vehicles, no place for cars to pull over to allow others to pass on 20 foot wide streets, and construction crews parking illegally in red safety zones that need to remain clear for fire and emergency trucks to negotiate sharps turns in the hillside.

26. Meanwhile, over in other hillside areas of the City such as Hollywood Hills, Beverly Crest and other areas outside the Specific Plan, the City Planning and Building and Safety Departments are requiring BHO slope band analysis in order to determine allowable FAR for projects in those areas. Because the BHO is more strict than the Specific Plan's FAR, and the City Planning Department follows a practice of only applying the Specific Plan's

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generally less strict FAR calculation, the City Planning Department has literally placed a target on the Specific Plan area where many want to now go to maximize solely market rate house sizes and profits. This would not be occurring at the magnitude it is occurring without the City Planning Department's patterns and practices in its refusal to follow the plain language of Specific Plan Section 2 A & B.

City Pattern and Practice Of Drafting Land Use Appeal Ordinances To Exclude Persons With Constitutionally Protected Due Process Rights From A Right To Notice Of Constitutionally Required Hearings or To File An Appeal

27. In the seminal land use case of *Horn v. County of Ventura* (1979) 24 Cal.3d 605, our Supreme Court held that in an adjudicatory or quasi-judicial approval of a development project, property owners adjacent to the project site are entitled to reasonable notice and a reasonable opportunity to be meaningfully heard before the public agency may affect property owner interests with a project approval. The Court held that the larger and more impactful the project, the wider the radius of property owners entitled to notice and right to be heard. Id. at 618.

28. Petitioner is informed and believes, and thereon alleges that historically, the City's land use appeal ordinances have provided a right to a person who self identifies as aggrieved by a City decision to have a right to file a land use appeal, and to all persons within certain radius to receive notice of the hearing and right to be heard at the land use appeal hearing.

29. In recent years, the City Attorney has returned to City Council with draft land use appeal ordinances that purport to restrict the right of persons owning or renting property within a project's *Horn*-defined impact area to notice of decisions that would impact them, and/or restrict those persons who are allowed to file appeals to less than the group of constitutionally affected persons surrounding the project. Many of these ordinances, including the Re-Code LA, Density Bonus Appeal, the Protected Tree Ordinance, and the CEQA Appeal

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ordinance contain restrictions on notice that excludes persons potentially in a project's impact area.

30. State law mandates a right to appeal CEQA determinations to the elected decision making body which here is the City Council. A CEQA appeal of an individual development project is a quasi-judicial or adjudicatory proceeding where the City Council exercises discretion to apply the CEQA facts about the project to CEQA law. Thus, *Horn*-defined constitutional due process is owed for CEQA appeals of individual projects.

31. When the CEQA Appeal implementation ordinance was placed before the City Council for approval by the drafters in the City Attorney's office, the City Council was asked to approve the ordinance containing this limitation of who is entitled to receive notice of the required public hearing: ***"The City Council shall hold a public hearing before acting on the appeal. Notice of the hearing shall be given by mail at least ten days before the hearing to the applicant; the appellant; any person or entity that has made a request in writing to receive CEQA notices; and any responsible or trustee agencies."*** This language was enacted by City Council into LAMC section 11.5.13E.

32. This notice language severely restricts notice, excluding every property owner or tenant living within the impact radius of the project as envisioned by the Supreme Court. *Horn* at 618. Even those sharing a property line with the project are excluded from notice of the quasi-judicial hearing.

33. In the case of drafting the CEQA Appeal ordinance, the City's recent pattern and practice of purposely excluding property owners and tenants from *Horn*-derived notice and right to be heard includes those at CEQA appeal hearings conducted by City Council because the ordinance systematically denies constitutionally required notice to those entitled to receive it.

The City Pattern and Practice Of An Unlawful pre-PLUM Committee Process

34. When a land use appeal involving a real estate project approved by the Planning Department or a planning commission, including a CEQA appeal, comes up to the City Council,

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the City Clerk refers the appeal to a committee for hearing and recommendation. In Los Angeles, that committee is the Planning and Land Use Management ("PLUM") Committee.

35. In a normal City, the matter would be lawfully noticed for a land use appeal hearing at the committee. The committee members would come to the hearing, conduct the hearing, hear a staff presentation about the project, hear the land use appellant's argument and evidence, hear the applicant's argument and evidence, listen to the public testimony and evidence of affected persons who appear to be heard, deliberate in public and vote, and make a recommendation report to City Council as to how to dispose of the appeal. At the hearing, the committee members would listen, deliberate, express their comments and positions about how to dispose of the land use appeal before the public in the open hearing.

36. The following allegations are made on information and belief. Petitioner's counsel has seen emails and attachments that confirm the substance of much of these allegations, although some of those materials are currently being challenged by the City via the claw back provisions of Code of Civil Procedure section 2031.285 in unrelated litigation. Therefore, the allegations here in no way discuss the specific information the City is currently seeking to claw back in other litigation, but the allegations will generally summarize a process not previously known to the public to the extent Petitioner now understands it.

37. Petitioner is informed and believes, and thereon alleges that the City's PLUM Committee does not operate like a normal city. Petitioner is informed and believes, and thereon alleges that the City has created an elaborate pre-PLUM meeting process that occurs between the time the land use appeal is referred to committee and when the public PLUM Committee meeting occurs. Petitioner is informed and believes, and thereon alleges that, in essence, contrary to the rights of land use appellants to unbiased decision makers who make their decision on the record and only after hearing the land use appeal testimony, City Council deputies act as intermediaries to casually and routinely communicate the comments and position of the Councilmember in whose district the project lies to other deputies and their Councilmembers ***prior to when the public PLUM Committee Meeting is conducted***. These

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activities violate the state's opening meeting law, Government Code section 54952.2(b), which allows deputies to answer questions or provide general information "if that person does not communicate to members of the legislative body the **comments or position** of any other member or members of the legislative body." (Emphasis added.)

38. Petitioner is informed and believes, and thereon alleges that this pre-PLUM process may include the City Clerk compiling all items pending or referred to the PLUM Committee as the "pre-PLUM meeting" agenda which is distributed to an unknown number of people more than a week when the public PLUM meeting is scheduled to occur.

39. Petitioner is informed and believes, and thereon alleges that prior to the pre-PLUM Meeting, deputies of City Councilmembers who have items, projects, or land use appeals on the upcoming PLUM Meeting agenda are expected to schedule a meeting with one of the deputies of the PLUM Committee Chair to discuss the item, project or land use appeal **including sharing comments and positions** of the Councilmember on his or her items on the agenda.

40. Petitioner is informed and believes, and thereon alleges that there is an in-person or virtual meeting that includes at minimum deputies of the Chair of the PLUM Committee, the City Attorney, the City Planning Department, the Chief Legislative Analyst, and the City Clerk. Petitioner is informed and believes, and thereon alleges that the PLUM Chair deputies attend the pre-PLUM meeting and oversee the meeting and share with the meeting participants the results of the meetings with other deputies of City Councilmembers with items on the agenda of the upcoming public PLUM meeting.

41. Petitioner is informed and believes, and thereon alleges that sometime around the pre-PLUM meeting, the Chief Legislative Analyst's staff prepares a summary of each item on the upcoming PLUM meeting agenda, and it is called "PLUM notes for 00-00-00.docx" in a marginal header. The content of the CLA's document is relatively objective, no different from what might be seen at a normal city where a staff analysis of items on the agenda might be

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released to the public as a staff report. But the CLA's document is marked "confidential" and at the end of each item discussion is a line drawn across the page.

42. Petitioner is informed and believes, and thereon alleges on the Friday before the next public PLUM Committee meeting regularly scheduled every two weeks on Tuesday afternoon, the CLA forwards to a list of PLUM Committee deputies two versions of the "PLUM notes for 00-00-00.docx". One version is in PDF format and cannot be edited. The second version is in Word. Petitioner is informed and believes, and thereon alleges that the reason the PLUM notes are distributed in Word format is that City Councilmembers are prepared for the upcoming PLUM Committee meeting by the planning deputies editing the CLA's "PLUM notes for 00-00-00.docx" into a briefing document where the deputy of the Councilmember shares the comments and positions of other Councilmembers including whether each Councilmember supports, opposes or wants a continuance of a land use appeal on a project in their district.

43. Petitioner is informed and believes, and thereon alleges that the City Clerk's staff, perhaps with assistance from the CLA and deputies of the PLUM Committee Chair compiles a PLUM meeting script. Petitioner is informed and believes, and thereon alleges the PLUM meeting script is just as its title implies: a word-by-word scripted narrative to be read aloud by the PLUM Committee chair, the CLA analyst, the Deputy City Attorney, and the City Clerk deputy during the meeting and a detailed outline of each item for the upcoming PLUM Committee meeting. Generally speaking, each item of business on the PLUM Committee may include a brief description, names of project applicants, project appellants, which council district is involved, possible actions, recommended time limits to impose on land use appeal parties, and the recommended outcome of the hearing, like "REC: DENY APPEAL."

44. Petitioner is informed and believes, and thereon alleges by the end of Monday, the day before the public PLUM Committee meeting, the deputies of each Councilmember has opened the Word version of "PLUM notes for 00-00-00.docx", scrolled below the line inserted by the CLA after each item of business described in the document, and typed in the information the deputy has obtained through hallway conversations, meetings, phone calls, or emails/texts

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exchanged with other deputies to City Council. Petitioner is informed and believes, and thereon alleges if there are seven land use appeal hearings scheduled for the public PLUM meeting, the deputies will report to their Councilmembers in these separate briefing documents for all seven of the land use appeals, what the applicable Councilmember recommends as his or her desired outcome of the land use appeal. A tradition or norm exists in the City for councilmembers to defer to the desired position of the Councilmember in whose district a real estate project is proposed, and as outside observers have noted for years, there are remarkable unanimous votes on even controversial projects because the other Councilmembers have not exercised independent judgment on each item of business -- they simply use this enormous behind-the-scenes pre-PLUM process to learn what the affected Councilmember's position is, and they join it barring unusual circumstances.

45. Petitioner is informed and believes, and thereon alleges that while the deputies of Councilmembers are disseminating advance comments and positions of other Councilmembers to the full PLUM Committee members, the City staff completes preparation of a PLUM meeting script that is not transmitted through the City's email server where it is archived by the City's Information Technology Agency. Instead, the PLUM meeting script is distributed through use of a cloud-based document holding place like Dropbox or Google Documents. Petitioner is informed and believes, and thereon alleges whoever is supposed to take a copy of the PLUM meeting script to the public PLUM meeting knows how to log into the cloud-based document storage location to obtain the PLUM meeting script they will read from or refer to during the PLUM to know the recommended outcomes. Petitioner is informed and believes, and thereon alleges that the recommended outcomes printed on the PLUM meeting script are the result of substantive discussions by representatives of the PLUM Committee chair, the City Attorney, the City Clerk, the Chief Legislative Analyst, and the Planning Department who attend the pre-PLUM meeting the week before.

46. Petitioner is informed and believes, and thereon alleges that the City's pre-PLUM process results in a massive, systematic deprivation of the constitutional rights of land

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use appellants to a fair hearing because the system is designed for the exchange of information and positions of Councilmembers outside the constitutionally required public hearing room where such information is supposed to be exclusively exchanged and deliberated.

47. Petitioner is informed and believes, and thereon alleges that the pre-PLUM process also is a massive, systematic violation of the open meeting law of the state, specifically Government Code section 54952.2(b)(1) which provides: "A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body."

48. While Government Code section 54952.2(b)(2) permits City deputies to provide information or answer questions about the items of business on the upcoming PLUM meeting, that subsection absolutely and strictly forbids any sharing of individual Councilmember "comments or positions" about items of business, including and especially pending land use appeals because to share such "comments or positions" in advance out of public view is fundamentally inconsistent with the City's constitutional obligation to conduct fair land use appeals. To the best of the knowledge of Petitioner, the City has no rules or policies to educate and enforce among City Councilmembers and deputies the information prohibitions of the open meeting law and the requirements for conducting a constitutionally fair public land use appeal hearing.

49. In sum, the City's heretofore undisclosed pre-PLUM process is an elaborate dress rehearsal, and the public PLUM meeting is a cynical ballet performed by elected and appointed City public officials pursuant to a script written by the City's bureaucrats. This is not normal.

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The Individual Project And Land Use Appeal Hearing Affected By The City's Unlawful Patterns and Practices

50. Each and every one of the above-described pattern and practices negatively and prejudicially impaired the City's processing of the project application and land use appeal hearing process in proceedings before the City for the individual project in this case. It is literally a poster child of the City Planning Department's departure from dutifully enforcing the land use laws it is charged with enforcing, and the City Council's stunning systematic violation of constitutional hearing rights of land use appellants like Petitioner in this case.

51. Prior to April 19, 2021, the Real Parties, through their architect, submitted an application and entitlement plan sets to the City Planning Department staff for review, seeking issuance of a discretionary land use entitlement known as a Specific Plan Project Compliance Determination. Because the evaluation process is discretionary, the individual project in this case is subject to CEQA environmental review unless there are appropriate facts establishing a lawful exemption from CEQA review. The plan set submitted for the Project included a standard Project summary page where the architect was supposed to provide accurate information about the Project depicted on the following pages. It included the total number of square feet the project supposedly had on Levels 1, 2 and 3. The architect's summary page information was NOT submitted under penalty of perjury.

52. On April 19, 2021, the Director of Planning issued a Project Compliance Determination for the Project. The City erroneously determined that the Project was exempt from CEQA based upon a Categorical Exemption. Petitioner is informed and believes, and thereon alleges that the City Planner reviewing compliance with the FAR requirements merely relied on the numbers provided by the architect on the summary page, and did not conduct an independent verification of the actual project square footages shown on the attached plans.

53. Subsequently, Petitioner filed a timely appeal of the Director of Planning's Determination including the City's determination that the Project was exempt from CEQA based upon a Categorical Exemption. Additionally, the Project was challenged as not in

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compliance with the Specific Plan, including but not limited to the FAR and failure to include any significant architectural variety as required by the Specific Plan.

54. A hearing on the Project appeal was scheduled before the City's East Los Angeles Planning Commission on July 14, 2021. During the period leading up to the scheduled hearing, the Petitioner submitted substantial expert evidence that the Project lay within a State-mapped Earthquake Induced Landslide Zone and that the City's own laws and regulations mandated that the Project must be subjected to an enhanced slope stability study of the proposed three-story pile driven structure. Emails obtained by Petitioner reveal that the immediate response of the Developer's architect was to take an eraser to the Project plans to relabel the three-story structure as a two-story structure with the formerly designated "Art Studio and Mechanical Room" as "Basement Crawl Space" and to remove the depiction of a floor structure for the lowest level of the building. The email communications of the architect to the City failed to explain why there was still a staircase from the level above down to the lowest level, yet it was now proposed to hang in the air with no floor. Based upon the relabeled plans, the Developer and their architect asked that the City regard the structure as two-story and that the required environmental safety study would not be required.

55. In addition, Petitioner submitted substantial evidence and analysis demonstrating that the most restrictive FAR for the Project was the calculation generated by the BHO and not the Specific Plan. Petitioner also submitted analysis showing that the actual dimensions of the approved project plans significantly exceeded the allowable FAR under the BHO and even the less restrictive Specific Plan FAR calculation the City Planning Department was improperly applying.

56. In the period leading up to the July 14, 2021 Area Planning Commission meeting, the City Planning staff filed no staff report responding to the Petitioner's appeal and supporting materials. After concerned community members appeared to testify in support of the appeal, the City staff recommended that the appeal hearing be "postponed" to an undetermined date.

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Beverly Hills, CA 90211

57. On December 8, 2021, the East Los Angeles Planning Commission conducted a hearing of Petitioner's appeal of the Director of Planning's Project Compliance Determination for the Project, including whether the Project was exempt from CEQA based upon a Categorical Exemption. At the conclusion of the hearing, the Commission took a vote which was to be reduced by the Commission staff to a written Letter of Determination.

58. On December 28, 2021, the City issued the Letter of Determination of the Commission's decision approving the Project and adopting a Notice of Exemption as the applicable environmental clearance document for the Project, even though the required environmental study to determine the feasibility and safety of the building was not attached to the revised staff report. Instead, the City Planning staff tried to support the architect's claim that the three-story structure was only two-story. The City Planning staff went so far as to assert that the relabeled "Basement/Crawl Space" was now embedded into the hillside (presumably to support the City Planning staff's contention the previously suspended in the air lowest level was now a basement partially embedded in the hillside.)

59. Petitioner filed an appeal of the environmental determination with the City Clerk on January 11, 2022 pursuant to Public Resources Code Section 21151(c). This section of the Public Resources Code states as follows: *"If a nonelected decisionmaking body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decisionmaking body, if any."*

60. Los Angeles Municipal Code section 11.5.13D provides: "Stay. Upon the timely filing of an appeal pursuant to Subsection C., there shall be a stay on the Project approval and any discretionary or ministerial permits issued in reliance upon the Project approval. Notwithstanding any contrary language in this Code, the time to act on any related Project approval shall be tolled until the appeal is decided by the City Council." Under this provision, the Project approvals at the Area Planning Commission were not final until the City Council

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determined if the supporting CEQA document, the categorical exemption, was, in the opinion of City Council, in compliance with the CEQA statute.

61. After a choice made by the City Planning Department to delay consideration of this appeal during the pendency of COVID-19 emergency orders, on May 2, 2023, the Planning and Land Use Committee of the Los Angeles City Council conducted a hearing regarding the eligibility of the Project for an Exemption from CEQA. In the period of time leading up to the May 2, 2023 PLUM hearing date, Petitioner sent correspondence to the City Council specifically alerting it that LAMC section 11.5.13D, which purports to permit the City to give no mailed notice of the CEQA land use appeal hearing to potentially impacted property owners and tenants surrounding the project site and along Crane Boulevard, was constitutionally infirm. This notice of potential constitutional violation was ignored with City Planners citing section 11.5.13D as their lawful basis to not give mailed notice to all persons surrounding the project site.

62. Petitioner's counsel and concerned community members submitted written materials to the Council File leading up to the May 2, 2023 PLUM Committee meeting.

63. Petitioner is informed and believes, and thereon alleges that the City's undisclosed pre-PLUM process unfolded behind-the-scenes leading up to the scheduled CEQA land use appeal before the PLUM Committee on May 2, 2023. Petitioner is informed and believes, and thereon alleges that the deputy to Councilmember Eunisses Hernandez had a meeting or phone call or other interaction with a deputy of PLUM Committee Chair Marqueece Harris Dawson where Councilmember Hernandez office's comments and/or position on the CEQA land use appeal was transmitted to the office of the PLUM Committee Chair. Petitioner is informed and believes, and thereon alleges that a pre-PLUM meeting was conducted by City officials as was the City's pattern and practice. Petitioner is informed and believes, and thereon alleges that the preferred outcome of the land use appeal in this case shared by the office of Councilmember Hernandez was communicated to the City officials gathered at the pre-PLUM meeting for the upcoming May 2, 2023 PLUM Committee meeting. Petitioner is informed and

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believes, and thereon alleges that the preferred outcome of the land use appeal in this case, shared by the office of Councilmember Hernandez, was also communicated by other deputies to other PLUM Committee members in their edits of the "PLUM notes for 05-02-23.docx" document sent to them by the CLA's staff and then used to brief their own Councilmembers.

64. The May 2, 2023 land use appeal went forward after all the pre-PLUM process was completed. Anyone other than the applicant and appellant who wished to speak on the Project were forced into a general public speaking period at the beginning of the meeting. Finally, when Petitioner's appeal was called, the PLUM Chair or staff informed him he would have only 3 minutes to present a land use appeal with these complex issues. Petitioner's counsel presented relevant information and objections to the approval of the Project utilizing a Notice of Exemption based upon a Categorical Exemption, alerted the PLUM Committee to other deficiencies including the failure to give lawful notice of the hearing. The PLUM Committee voted to recommend to the full City Council that the appeal be denied and that the Project be approved using the Notice of Exemption.

65. The City Council, without hearing, adopted the recommendation of the PLUM Committee and denied Petitioner's CEQA appeal on May 10, 2023.

66. To the knowledge of Petitioner, no Notice of Exemption was filed with the County Recorder. This action has been brought within the applicable statute of limitations for challenging a categorical exemption.

67. Members of Petitioner and other interested persons made oral and written comments on the Project and raised each of the legal deficiencies asserted in this petition.

CEQA'S SUBSTANTIVE AND PROCEDURAL REQUIREMENTS

68. California Environmental Quality Act is California's broadest environmental law. CEQA helps to guide public agencies such as the City during issuance of permits and approval of projects. Courts have interpreted CEQA to afford the fullest protection of the environment within the reasonable scope of the statutes. CEQA applies to all discretionary projects proposed

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to be conducted or approved by a City, including private projects requiring discretionary government approval. See California Public Resources Code, sections 21000 – 21178.

69. "CEQA broadly defines a 'project' as 'an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and ... that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.' [Citation.] The statutory definition is augmented by the [CEQA] Guidelines [Cal.Code Regs., tit. 14, § 15000 et seq.], which define a 'project' as '*the whole of an action*, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment....'" T*uolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1222 (*Tuolumne County*). This includes all phases of a project that are reasonably foreseeable, and all related projects that are directly linked to the Project. (14 Cal. Code Regs., § 15378).

70. A strong presumption in favor of requiring preparation of an Environmental Impact Report ("EIR") is built into CEQA which is reflected in what is known as the "fair argument" standard, under which an agency must prepare an EIR whenever substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment. *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Friends of "B" St. v. City of Haywood* (1980) 106 Cal.App.3d 988, 1002.

71. "The EIR is the primary means of achieving the Legislature's considered declaration that it is the policy of this state to 'take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state.' [Citation.] The EIR is therefore 'the heart of CEQA.' [Citations.] An EIR is an 'environmental "alarm bell" whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.'" *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392.

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72. Under CEQA and the CEQA Guidelines, if a project is not exempt and may cause a significant effect on the environment, the agency must prepare an EIR. PRC §§ 21100, 21151; 14 Cal. Code Regs. §15064(a)(1), (f)(1). "Significant effect upon the environment" is defined as "a substantial or potentially substantial adverse change in the environment." PRC §21068; 14 Cal Code Regs §15382. A project "may" have a significant effect on the environment if there is a "reasonable probability" that it will result in a significant impact. *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83 n.16; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 309. This standard sets a "low threshold" for preparation of an EIR. *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App. 4th 903, 928; *Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572, 580; *Citizen Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 310.

FIRST CAUSE OF ACTION

(Violation of the California Environmental Quality Act)

73. Petitioner re-alleges and incorporates by reference the preceding paragraphs of this Petition.

74. The City determined that the Project was exempt from CEQA as a Class 3 project. The Class 3 exemption is reserved for new construction or conversion of small structures (which include the construction of one single family dwelling). The City also determined that the Project was exempt from CEQA as a Class 32 project. However, according to the State CEQA Guidelines, the following exceptions are applicable to the use of both the Class 3 and Class 32 exemptions:

a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located -- a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply all instances, except where the project may impact on an environmental

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resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.

e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.

f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

75. As explained below, the City erroneously concluded that the Project was eligible for both the Class 3 and Class 32 categorical exemptions.

Unusual Circumstances Renders Both Class 3 and Class 32 Exemption Unavailable

76. Both of the CEQA exemptions utilized by the City are unavailable due to "unusual circumstances." Application of both exemptions is limited by the factors described in section 15300.2." An exemption should be denied if one of the exceptions listed in section 15300.2 of the Guidelines applies. Section 15300.2, subdivision (c), of the Guidelines provides for one such exception and states that if there is a "reasonable possibility" of a "significant

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effect on the environment due to unusual circumstances," then the categorical exception cannot apply. A "circumstance is 'unusual' . . . judged relative to the typical circumstances related to an otherwise typically exempt project." Voices for Rural Living v. El Dorado Irr. Dist. (2012) 209 Cal.App.4th 1096, 1108–09. As pointed out by the California Supreme Court in Berkeley Hillside Preservation v. City of Berkeley (2015) 60 Cal.4th 1086, 1105: "[A] party may establish an unusual circumstance with evidence that the project will have a significant environmental effect. That evidence, if convincing, necessarily also establishes "a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances."

77. The Association commissioned an expert report from Wilson GeoSciences Inc. and its team of Kenneth Wilson, Certified Engineering Geologist, and Ali Abdel-Haq, Geotechnical Registered Professional Engineer. The expert report concluded as follows:

> "1) There is a reasonable possibility that the Project will have a significant Geology or Soils impact due to the circumstance that most of the Project site is located in an earthquake-induced landslide zone mapped by the California Geological Survey, this fact is not disclosed or analyzed in the two reports we reviewed, and such areas merit special investigation to protect safety of on-site residents and surrounding persons and property from landslide or collapse during strong earth movement.
>
> 2) There is also a reasonable possibility of a significant Geology or Soils impact due to the Project's bedrock and soil conditions because studies performed to date on only one lot do not assure that conditions remain constant across the entire property, and the data in the GeoSystems and SubSurface reports suggests bedrock may have certain unstable conditions discussed herein.
>
> 3) There is a reasonable possibility of a significant Geology or Soils impact because it appears the GeoSystems report performed slope stability calculations based upon a two-story structure on piles above grade without a lower story but the Project plans approved by the City contain a lower level third-story that appears to require a retaining wall adjacent to Crane Blvd. not examined in the GeoSystems report."

78. Because the Project will have a significant effect on the environment the City cannot deem the Project exempt from CEQA. The City attempted to deflect from the criticisms

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of the aforementioned expert report, by the conclusions were not supported by substantial evidence.

The Project Does Not Meet Criteria for Class 32 Exemption

79. Petitioner submitted detailed documentation to the City showing how the Project did not meet the criteria to be eligible for a Class 32 exemption under CEQA Guidelines Section 15332. That Guidelines section provides that Class 32 consists of projects characterized as in-fill development meeting all of these conditions:

> "(a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
>
> (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
>
> (c) The project site has no value as habitat for endangered, rare or threatened species.
>
> (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
>
> (e) The site can be adequately served by all required utilities and public services.
>
> **Note:** Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code." (Emphasis added)

80. The administrative record must disclose substantial evidence of every element of the exemption proposed by the City. The City failed to do this.

The Project is Not Consistent With All Applicable Zoning Regulations

81. The proposed Project is not consistent with **all** applicable general plan policies as well as with applicable zoning designation and regulations, and therefore does not comply with CEQA Guidelines Section 15332(a). During the hearing process, substantial evidence was submitted to the record demonstrating that the architect's summary of the floor area of the structure was not consistent with the floor area that could be calculated from the overall

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dimensions of each floor of the Project plans on the pages behind the architect's title/summary page of the plans. Additionally, there was substantial evidence that the City Planning Department refused to apply the most restrictive floor area calculated for the Project site under the Los Angeles Municipal Code.

82. The floor area calculations on the front of the plans for the Project were passively used by City Planners in the Project description and analysis without independent verification of their accuracy. There is one calculation under the Specific Plan and one under something called "LAMC" but it is not based upon the regulations of the Baseline Hillside Ordinance ("BHO").

83. In both of these summary calculations, that do not show the calculations used to derive the numbers, do not include any of the non-habitable areas of the building (e.g. stairwells, mechanical room, exterior walls, etc.) as required by both the Specific Plan and the BHO. The Specific Plan has always counted as part of the Floor Area calculation ALL of the area "within the exterior walls" of the buildings.

84. The Mount Washington/Glassell Park Specific Plan provides:

> "**Floor Area:** Notwithstanding LAMC Section 12.03, Floor Area is that area in square feet confined within the exterior walls of a building of a One-Family Project, including the area of stairways, shafts, covered automobile parking areas and basement storage areas, and excluding uncovered outdoor decks."

85. The plans for the Project show a three level building with the basic dimensions of the exterior walls as: 30' deep on the north side, on the east side 62'-8.5" (62.7') wide and 52'-4" (52.33') on the west side. The south side angles to make a triangular portion to otherwise a rectangular box. Level 2 and 3 are exactly these dimensions and Level 1 is somewhat shorter due to the topography of the site. Level one measures: 21' deep by 62'-8.5" by 52'-4".

86. The areas for each level including all area within the exterior walls is then easily calculated as (the rectangle minus the triangle that forms the south side):

Level 1: (21 x 62.7) – [.5 x (62.7 – 52.33) x 21] = 1,253 sq. ft.
Level 2: (30 x 62.7) – [.5 x (62.7 – 52.33) x 30] = 1,726 sq. ft.
Level 3: (30 x 62.7) – [.5 x (62.7 – 52.33) x 30] = 1,726 sq. ft.

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87. Based upon the Specific Plan definition set forth above, the total proposed Floor Area for the project, **taken from the plans themselves, and not from the summary on the front of the plans**, is: 4,704 sq. ft. Thus, the assertion that the total floor area of the proposed house is 3,633 sq. ft. is not correct.

88. The LAMC Section 12.03 definition of floor area excludes non-habitable areas and does not include the area of the exterior walls. But in 2017 the City adopted modifications to the BHO which added the definition for Residential Floor Area which, like the Specific Plan, does not exempt non-habitable areas for hillside projects except some limited amounts for parking, accessory buildings, and basements. The BHO definition of Residential Floor Area of the LAMC now reads in part:

> **"FLOOR AREA, RESIDENTIAL. (Amended by Ord. No. 184,802, Eff. 3/17/17.)** The area in square feet confined within the exterior walls of a residential or non-residential Building on a Lot in an RA, RE, RS, or R1 Zone."

89. Thus, in 2017, even the BHO's definition of floor area was modified to generally align with the Specific Plan's definition enacted in 1993 (the City stopped excluding portions of hillside buildings from the floor area calculation). Under both laws, the floor area is generally measured using the simple exterior wall measurements. This is more simple and streamlined for City officials to review for accuracy, and assure compliance with the law.

90. In this firm's July 6, 2021 Initial Submission correspondence, we showed calculations of the maximum allowed Floor Areas as prescribed by the Specific Plan and BHO. We agreed with the City and Applicant that the maximum allowable floor area square footage calculated for the Project under the Specific Plan is 3,743 sq. ft. However, we also performed a slope band analysis using data systems available on the City's website, we showed our work in detail, and even after granting the 200 sq. ft. exemption for garage floor area permitted under the BHO in hillside areas, the maximum floor area allowed under the BHO was 2,989 sq. ft.

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91. Based upon these calculations, the records before the Commission establish these facts:

> Actual house floor area as measured along exterior walls under both Specific Plan (Specific Plan excludes only outside uncovered decks which do not exist on the plans for this house so the Floor Area will be the same as BHO), and BHO definitions since 2017: 4,704 sq. ft.

92. Such plans objectively exceed the maximum allowable floor area under both laws, and by significant amounts:

> Specific Plan: 4,704 (House FAR) – 3,743 (Specific Plan Maximum) = 960 sq. ft. over
> BHO: 4,704 (House FAR) – 2,989 (BHO Slope Band Maximum) = 1,716 sq. ft. over
> Based upon these calculations, the authorized floor area ratios are:
> Specific Plan allowed FAR: 3,743 / 8,914 (lot area) = .42
> BHO allowed FAR: 2,989 / 8,914 = .34
> Project as actually proposed: 4,704 / 8,914 = .53

93. Section 2 of the Specific Plan mandates that City officials determine and apply the LAMC containing the BHO ratio, **unless** the Specific Plan ratio is more restrictive. Because the BHO maximum FAR ratio over the site is .34 and the Specific Plan maximum FAR ratio is .42, the more restrictive BHO maximum FAR of 2,989 sq. ft. must be enforced under the plain language of Section 2.

94. On this basis, the proposed house at 4,704 sq. ft. is over the maximum allowable floor area of 2,984 sq. ft. Even if the City's faulty assertion that the house measures only 3,633 sq. ft. applied, which it does not, the proposed house remains over the maximum allowable floor area of 2,984 sq. ft. As a result, the Project is not consistent with all applicable zoning regulations and therefore the City cannot deem the Project as a Class 32 urban infill development.

The Project Has Value for Rare Species

95. The "urban infill" exemption is reserved for environmentally benign projects. In order to qualify for this exemption, a public agency must conclude that the "project site has no value, as habitat for endangered, rare or threatened species." Cal. Code Regs. tit. 14 § 15332.

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The City has failed to acknowledge that the Southern California Black Walnut ("Walnut") meets the criteria to be considered "rare" under CEQA Guidelines Section 15380 subdivision (b). The California Department of Fish and Wildlife ("CDFW"), a trustee agency, has concluded that the Walnut may meet the definition of a "rare, threatened or endangered species." CDFW has published a documented entitled "*Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Nature Communities*." CDFW states in that document that plants tracked by the California Natural Diversity Database and California Native Plant Society as California Rare Plant Rank 3 or 4 may meet the definition of rare or endangered under CEQA Guidelines Section 15380, subdivisions (b) and (d) and warrant consideration under CEQA on the basis of declining trends, recent taxonomic information and other factors." Id.

96. Southern California Black Walnut trees are included in the City CEQA Thresholds Guide's "Sensitive Species Compendium" as shown below. The status of this tree is listed as "4" – which means "Plants of limited distribution - a watch list." A footnote describing this species category is included that states:

> Very few of the plants constituting List 4 meet the definitions of Section 1901, Chapter 10 (Native Plant Protection Act) or Sections 2062 and 2067 (California Endangered Species Act) of the California Department of Fish and Game Code, and few, if any, are eligible for listing. Nevertheless, many of them are significant locally, and the [Department of Fish and Game] recommends that List 4 plants be evaluated for consideration during preparation of environmental documents relating to CEQA. This may be particularly appropriate for the type locality of a List 4 plant, for populations at the periphery of a species' range or in areas where the taxon is especially uncommon or has sustained heavy losses, or for populations exhibiting unusual morphology or occurring on unusual substrates."

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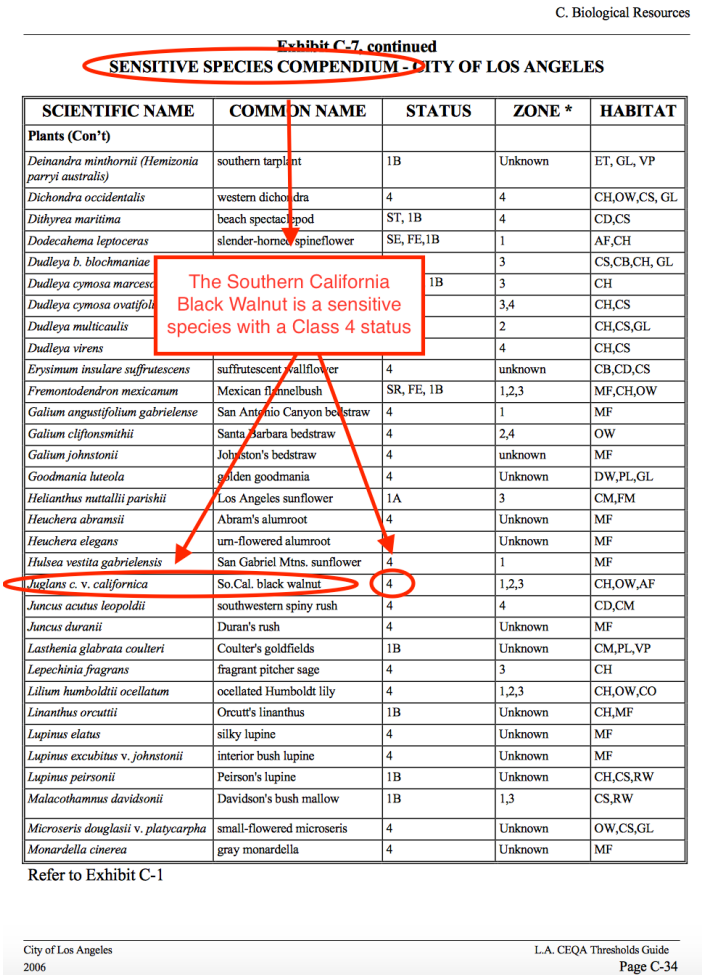

C. Biological Resources

Exhibit C-7, continued
SENSITIVE SPECIES COMPENDIUM - CITY OF LOS ANGELES

SCIENTIFIC NAME	COMMON NAME	STATUS	ZONE *	HABITAT
Plants (Con't)				
Deinandra minthornii (Hemizonia parryi australis)	southern tarplant	1B	Unknown	ET, GL, VP
Dichondra occidentalis	western dichondra	4	4	CH,OW,CS, GL
Dithyrea maritima	beach spectaclepod	ST, 1B	4	CD,CS
Dodecahema leptoceras	slender-horned spineflower	SE, FE,1B	1	AF,CH
Dudleya b. blochmaniae			3	CS,CB,CH, GL
Dudleya cymosa marcesc		1B	3	CH
Dudleya cymosa ovatifol			3,4	CH,CS
Dudleya multicaulis			2	CH,CS,GL
Dudleya virens			4	CH,CS
Erysimum insulare suffrutescens	suffrutescent wallflower	4	unknown	CB,CD,CS
Fremontodendron mexicanum	Mexican flannelbush	SR, FE, 1B	1,2,3	MF,CH,OW
Galium angustifolium gabrielense	San Antonio Canyon bedstraw	4	1	MF
Galium cliftonsmithii	Santa Barbara bedstraw	4	2,4	OW
Galium johnstonii	Johnston's bedstraw	4	unknown	MF
Goodmania luteola	golden goodmania	4	Unknown	DW,PL,GL
Helianthus nuttallii parishii	Los Angeles sunflower	1A	3	CM,FM
Heuchera abramsii	Abram's alumroot	4	Unknown	MF
Heuchera elegans	urn-flowered alumroot	4	Unknown	MF
Hulsea vestita gabrielensis	San Gabriel Mtns. sunflower	4	1	MF
Juglans c. v. californica	So.Cal. black walnut	4	1,2,3	CH,OW,AF
Juncus acutus leopoldii	southwestern spiny rush	4	4	CD,CM
Juncus duranii	Duran's rush	4	Unknown	MF
Lasthenia glabrata coulteri	Coulter's goldfields	1B	Unknown	CM,PL,VP
Lepechinia fragrans	fragrant pitcher sage	4	3	CH
Lilium humboldtii ocellatum	ocellated Humboldt lily	4	1,2,3	CH,OW,CO
Linanthus orcuttii	Orcutt's linanthus	1B	Unknown	CH,MF
Lupinus elatus	silky lupine	4	Unknown	MF
Lupinus excubitus v. johnstonii	interior bush lupine	4	Unknown	MF
Lupinus peirsonii	Peirson's lupine	1B	Unknown	CH,CS,RW
Malacothamnus davidsonii	Davidson's bush mallow	1B	1,3	CS,RW
Microseris douglasii v. platycarpha	small-flowered microseris	4	Unknown	OW,CS,GL
Monardella cinerea	gray monardella	4	Unknown	MF

The Southern California Black Walnut is a sensitive species with a Class 4 status

Refer to Exhibit C-1

City of Los Angeles 2006 — L.A. CEQA Thresholds Guide Page C-34

Figure 10 – Markup of Sensitive Species Compendium for L.A. CEQA Thresholds Guide

97. A marked-up screenshot of the Sensitive Species Compendium Key Chart from the Thresholds Guide is shown below:

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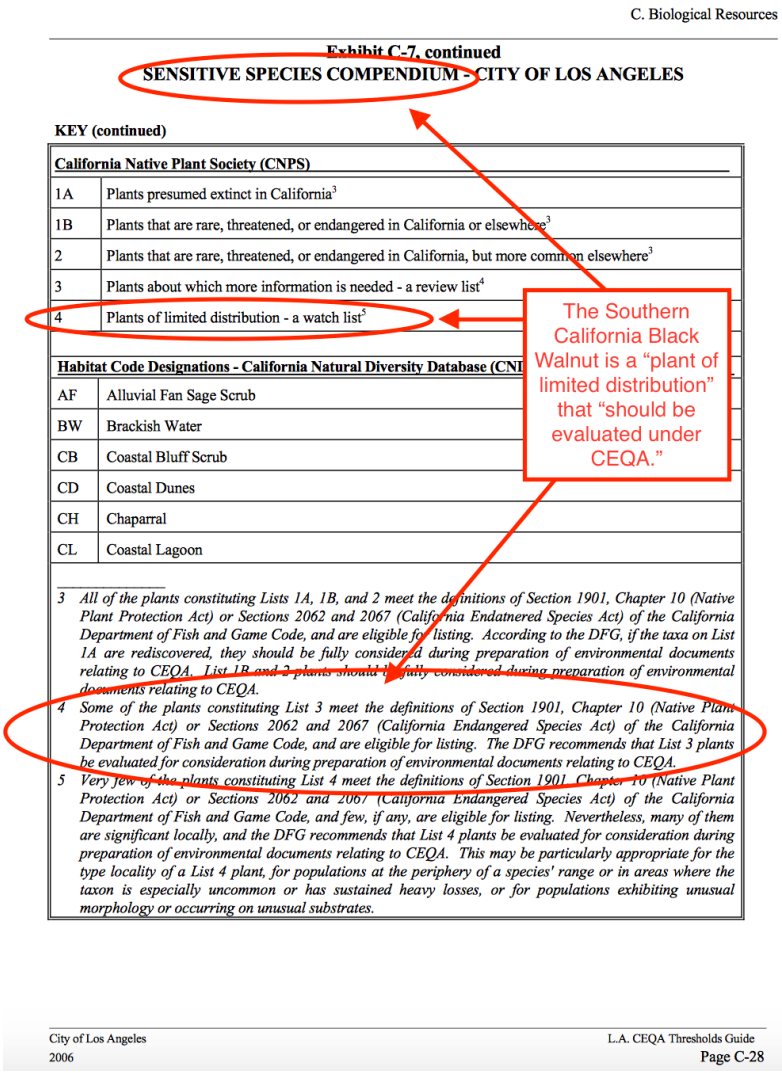

C. Biological Resources

Exhibit C-7, continued
SENSITIVE SPECIES COMPENDIUM - CITY OF LOS ANGELES

KEY (continued)

California Native Plant Society (CNPS)	
1A	Plants presumed extinct in California[3]
1B	Plants that are rare, threatened, or endangered in California or elsewhere[3]
2	Plants that are rare, threatened, or endangered in California, but more common elsewhere[3]
3	Plants about which more information is needed - a review list[4]
4	Plants of limited distribution - a watch list[5]

Habitat Code Designations - California Natural Diversity Database (CNI	
AF	Alluvial Fan Sage Scrub
BW	Brackish Water
CB	Coastal Bluff Scrub
CD	Coastal Dunes
CH	Chaparral
CL	Coastal Lagoon

3 All of the plants constituting Lists 1A, 1B, and 2 meet the definitions of Section 1901, Chapter 10 (Native Plant Protection Act) or Sections 2062 and 2067 (California Endatnered Species Act) of the California Department of Fish and Game Code, and are eligible for listing. According to the DFG, if the taxa on List 1A are rediscovered, they should be fully considered during preparation of environmental documents relating to CEQA. List 1B and 2 plants should be fully considered during preparation of environmental documents relating to CEQA.

4 Some of the plants constituting List 3 meet the definitions of Section 1901, Chapter 10 (Native Plant Protection Act) or Sections 2062 and 2067 (California Endangered Species Act) of the California Department of Fish and Game Code, and are eligible for listing. The DFG recommends that List 3 plants be evaluated for consideration during preparation of environmental documents relating to CEQA.

5 Very few of the plants constituting List 4 meet the definitions of Section 1901, Chapter 10 (Native Plant Protection Act) or Sections 2062 and 2067 (California Endangered Species Act) of the California Department of Fish and Game Code, and few, if any, are eligible for listing. Nevertheless, many of them are significant locally, and the DFG recommends that List 4 plants be evaluated for consideration during preparation of environmental documents relating to CEQA. This may be particularly appropriate for the type locality of a List 4 plant, for populations at the periphery of a species' range or in areas where the taxon is especially uncommon or has sustained heavy losses, or for populations exhibiting unusual morphology or occurring on unusual substrates.

The Southern California Black Walnut is a "plant of limited distribution" that "should be evaluated under CEQA."

City of Los Angeles
2006

L.A. CEQA Thresholds Guide
Page C-28

Figure 11 – Markup Sensitive Species Compendium Key Chart for L.A. CEQA Thresholds Guide

98. Additionally, the City's own Conservation Element acknowledges that species on CDFW's list of "Species of Special Concern" are considered "rare." The Conservation Element includes the following definition: "Species of Special Concern. Rare, very restricted distribution, declining or at a critical life cycle stage when residing in California." The Walnut is on CDFW's "Special Plants List." The walnut is listed on page 92 of the Special Plants List having a California Rare Plant Rank (CRPR) of 4.2. CRPR 4 means Limited Distribution / Watchlist, and the .2 (of 4.2) means moderately threatened, with 20–80% of its occurrences threatened.

99. Further, the City adopted the following finding when the Walnut was added to the list of locally protected species in 2006 via Ordinance 177404.

> "In accordance with Charter Section 556, the proposed ordinance (Appendix A) is in substantial conformance with the purposes, intent, and provisions of the General Plan. It implements Policy 3 of Section 6: Endangered Species of the Conservation Element of the General Plan by revising regulations concerning endangered species; and Policy 4 of Section 10: Habitats of the Conservation Element of the General Plan by creating legislation that encourages and facilitates protection of local native plant and animal habitats. It also implements the California Environmental Quality Act by designating Juglans californica var. californica as a protected species, consistent with the recommendations of the California Native Plant Society (6th. Inventory of Endangered Species, RED Code 4–4-4) that this 'locally significant' species be 'evaluated for consideration during the preparation of environmental documents relating to CEQA.'"

100. The City Council adopted the Planning Commission's findings. Policy 3 of Section 6: Endangered Species of the Conservation Element of the General Plan states:

> "Policy 3: continue to support legislation that encourages and facilitates protection of endangered, threatened, sensitive and rare species and their habitats and habitat corridors."

101. Finally, Dr. Travis Longcore, an environmental scientist who teaches at UCLA, has concluded that the Walnut is indeed considered a "rare" species. Dr. Longcore has authored an article entitled Conservation of California Walnut in the Eastern Santa Monica Mountains. Dr. Longcore states as follows:

> "California walnut (Juglans californica) is recognized by the State of California as a rare species and is at risk of becoming endangered if the trends of habitat loss for the species continues. Yet, over the past three years, the City of Los Angeles has permitted the removal of this species at the rate of one mature tree every 7.2 days. 1 Although the City has a native tree protection ordinance, these trees are routinely permitted for removal to make way for new construction and expansion of existing homes.

102. Further, the United States Department of Agriculture's Index of Species Information notes that the "Southern California walnut woodland is severely threatened by urbanization." Also, a leading researcher, Dr. Ronald Quinn, has stated the following: "It is

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important to recognize that California walnuts are rapidly approaching the status of a custodial species, which I define as a species with remnant natural populations found only within reserves of limited size, where protection of the population is an explicit management goal. Free ranging herds of American bison (Bison bison) in natural parks are an example of a custodial species." Finally, even the California Department of Transportation (Caltrans) has acknowledged that the Southern California Black Walnut should be considered under CEQA. For example, in a Supplemental EIR conducted in 2016 for a highway project in Southern California, Caltrans stated the following:

> "Southern California black walnut (California walnut or California Black walnut) is not federally and/or State-listed and has no official status. However, California black walnut merits consideration under CEQA because of the relatively limited distribution of California walnut woodland, and it is a CNPS CRPR 4 species (plants of limited distribution). California walnut is only found in Southern California. Recent construction has removed this habitat in many areas, and its future is uncertain."
>
> Draft Supplemental Environmental Impact Report/Environmental Impact Statement and Section 4(f) Evaluation for SR-241/SR-91 Tolled Express Lanes Connector Project.

103. The Project site undeniably has "value as habitat" for the Sothern California Black Walnut as evidenced by the fact that there are four such trees located on the property, a fact noted in the Staff Report prepared for the Project. Moreover, the Project requires the removal of a walnut tree as part of the Project. In sum, the Project site has "value as habitat" for a rare species and therefore the Project is not eligible for the Class 32 exemption. The City's determination otherwise is not supported by substantial evidence.

104. Moreover, the proposed Project is not eligible for a Class 32 Categorical Exemption pursuant to CEQA Guidelines Sections 15332(b) due to cumulative impacts. During the administrative process, expert evidence was submitted that Project site presented significant construction challenges because construction equipment would have to staged on Crane Boulevard impairing safety in a High Fire Hazard Severity Zone. Petitioner explained that

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multiple projects of the same type were being constructed at the same time in close proximity to one another. Petitioner submitted detailed letters to the City explaining how the Project was not eligible for the Class 32 exemption.

105. *Procedural Violations of CEQA.* The City committed several procedural errors in the processing of the proposed project. First, the City changed the Categorical Exemption(s) claimed for the project in response to public comments. Second, the City failed to address the whole of the action. In so doing, the City placed undue burdens on members of the public seeking to ensure that the impacts of the proposed project are properly considered and mitigated. The record contains substantial evidence that retaining walls for degraded Crane Boulevard and possibly the third and lowest level of the structure are required but they were not analyzed in the Soils and Geology Report reviewed by the City. When this was brought to the City's attention it ignored this evidence.

The Project is Not Exempt from CEQA Because the City Has Proposed Mitigation Measures in the Form of Specialized Conditions of Approval for the Project

106. Significantly, in evaluating whether a categorical exemption may apply, the City may **not** rely on mitigation measures as a basis for concluding that a project is categorically exempt, or as a basis for determining that one of the significant effects exceptions does not apply. Salmon Protection & Watershed Network v. County of Marin (2004) 125 Cal.App.4th 1098.

107. The Grading Division has issued a Geology and Soils Report Approval Letter for the Project. This letter contains *numerous* conditions of approval. Many of these conditions are not simply applications of the California Building Code or existing City of Los Angeles regulations. The fact that the Geology Report contains specialized mitigation measures renders the application of a categorical exemption in appropriate and unlawful.

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Beverly Hills, CA 90211

The Project is Also Not Exempt from CEQA Because the City Seeks to Defer Application of Mitigation Measures to Another Date

108. Additionally, many of the conditions of approval in the Geology and Soils Report Approval Letter simply "kick the can" down the road and defer required environmental analysis to another date. Further, at the hearing before the Planning and Land Use Management Committee a planning deputy stated that a key community concern regarding geologic safety would be addressed later – at the time that the building permits were issued by LADBS. This does not comply with CEQA in connection with a discretionary permit approval. Analysis cannot simply be deferred.

109. Conditioning a project on another agency's future review of environmental impacts, without evidence of the likelihood of effective mitigation by the other agency, is insufficient to support a determination by the lead agency that potentially significant impacts will be mitigated. *Sundstrom v. Cnty. of Mendocino* (1988) 202 Cal.App.3d 296. Further, requiring formulation of mitigation measures at a future time violates the rule that members of the public and other agencies must be given an opportunity to review mitigation measures before a project is approved. PRC § 21080, subd. (c)(2)). *See League for Protection of Oakland Architectural & Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1396; *Quall Botanical Ganlens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1605, fn. 4; *Oro Fino Gold Mining Corp. v. Cnty. of El Dorado* (1990) 225 Cal.App.3d 872, 884; *Sundstrom v. Cnty. of Mendocino*, supra, 202 Cal.App.3d at p. 306, (condition requiring that mitigation measures recommended by future study to be conducted by civil engineer evaluating possible soil stability, erosion, sediment, and flooding impacts was improper). Moreover, a condition that requires implementation of mitigation measures to be recommended in a future study may conflict with the requirement that project plans incorporate mitigation measures before a proposed negative declaration is released for public review. PRC § 21080, subd. (c)(2); 14 Cal Code Regs § 15070(b)(1). Studies conducted after a project's approval do not guarantee an adequate inquiry into environmental

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Beverly Hills, CA 90211

effects. Such a mitigation measure would effectively be exempt from public and governmental scrutiny.

110. For the aforementioned reasons, Respondent committed a prejudicial abuse of discretion and failed to proceed in a manner required by law by failing to consider Petitioner's appeal and conduct the required additional environmental analysis under CEQA before approving the Project.

SECOND CAUSE OF ACTION

(Violation of Los Angeles Municipal Code 11.5.13)

111. Petitioner re-alleges and incorporates by reference the preceding paragraphs of this Petition.

112. The City's CEQA Appeal Ordinance, codified at 11.5.13, mandates that the City provide notice to any trustee agencies. Los Angeles Municipal Code Section 11.5.13(E) states as follows:

> "The City Council shall hold a public hearing before acting on the appeal. Notice of the hearing shall be given by mail at least ten days before the hearing to the applicant; the appellant; any person or entity that has made a request in writing to receive CEQA notices; and *any responsible or trustee agencies*." (emphasis added).

113. The City failed to provide notice of the CEQA Appeal hearing to the California Department of Fish and Wildlife, a trustee agency, as required by local law.

114. CDFW is a state agency under the California Natural Resources Agency. Fish & G. Code, § 700, subd. (a). The Department will exercise jurisdiction by law over natural resources affected by the Project. A "trustee agency" is defined in Public Resources Code as "a state agency that has jurisdiction by law over natural resources affected by a project, that are held in trust for the people of the State of California." Pub. Resources Code, § 21070. The CEQA Guidelines state that a trustee agency "means a state agency having jurisdiction by law over natural resources affected by a project which are held in trust for the people of the State of California. Trustee agencies include: (a) The California Department of Fish and Game with

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regard to the fish and wildlife of the state, to designated rare or endangered native plants, and to game refuges, ecological reserves, and other areas administered by the department." 14 Cal. Code Regs., § 15386. The Department has been tasked with a key role in reviewing environmental documents to assess biological impacts to fish and wildlife resources. Fish and Game Code section 1802 states as follows: "The Department has "jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. The department, as trustee for fish and wildlife resources, shall consult with lead and responsible agencies and shall provide, as available, the requisite biological expertise to review and comment upon environmental documents and impacts arising from project activities, as those terms are used in the California Environmental Protection Act (Division 13 (commencing with Section 21000) of the Public Resources Code)."

115. The City cannot claim there are no natural resources affected by the Project. There is undisputed evidence in the record that several Southern California Black Walnut are located on the property and that the Project will remove one such walnut. The City cannot claim there are no *significant* impacts and use that as a basis not to consult or notify a trustee agency. In *Gentry v. Murrieta* (1995) 36 Cal.App.4th 1359, 1387, the court stated as follows: "We conclude that natural resources can be "affected by" a project, and hence the lead agency may have duties toward "trustee agencies," even if the lead agency believes the project will have no significant effect on the environment. This broad construction of "trustee agency" serves the statutory purpose of fostering interagency consultation. Potential trustee agencies should have input at an early stage in the process into the question of whether the project affects resources within their jurisdiction, and hence into the very question of whether they are, in fact, trustee agencies." The City should be well aware that it not only has a duty to notify trustee agencies but to consult with them as well. The City just recently adopted a motion acknowledging the Santa Monica Mountains Conservancy, another state agency, as a trustee agency and requiring consultation.

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116. Petitioner is excused from any defense of failing to exhaust administrative remedies on the basis that the City "failed to give the notice required by law." PRC §21177(e) states that the exhaustion requirement "does not apply to any alleged grounds for noncompliance with this division for which there was no public hearing or other opportunity for members of the public to raise those objections orally or in writing prior to the approval of the project, or if the public agency failed to give the notice required by law." In *Fall River Wild Trout Found. v County of Shasta* (1999) 70 Cal.App.4th 482 the court held that the individual petitioners challenging a negative declaration were not barred for failure to exhaust administrative remedies, because the Department of Fish and Game, a trustee agency, had not been given legally required notice. In that case the lead agency had provided adequate notice to the public. However, the court nevertheless held that members of the public did not have to exhaust their administrative remedies, because the agency had not provided a notice of intent to adopt the mitigated negative declaration to the Department of Fish and Game nor sent a copy of the mitigated negative declaration to the State clearinghouse.

THIRD CAUSE OF ACTION

(Violation of Mount Washington/Glassell Park Specific Plan)

117. Petitioner re-alleges and incorporates by reference the preceding paragraphs of this Petition.

118. As set forth in detail previously, the Project violates the requirement of the Specific Plan that the City apply the most restrictive FAR under with the BHO or the Specific Plan. The City intentionally applied the less restrictive Specific Plan FAR as the applicable FAR standard. This action was a failure to proceed in accordance with law.

119. As set forth in detail previously, the City has a pattern and practice of failing to verify if the architect's summary of project square footages match the total square footage of the project a shown on the actual entitlement plans the City approves. To the best of Petitioner's knowledge, the City Planning staff admitted at hearing to not verifying the architect's

calculation as a matter of policy, which was an admission it was not done in this case. By refusing to verify if the architect's summary and total square footage calculation is accurate, the City's pattern and practice substantially increases the risk that the City will approve project plans that do not conform to the FAR limits allowed by law. This action was also a failure to proceed in accordance with law.

120. As set forth in detail previously, the actual dimensions of the building shown on the plans in the record calculate out to a square footage number that exceeds the square footage number listed by the architect on his summary page. When the accurate calculation of the building's square footage is determined, it exceeds both the more restrictive FAR limit of the BHO calculation and even the more permissive FAR limit of the Specific Plan calculation. In other words, the project plans themselves are substantial evidence that the Project exceeds any possibly applicable FAR standard. This action was also a failure to proceed in accordance with law.

121. As set forth in the record in this case, professional architect Fran Offenhauser, who has many years of experience in City of Los Angeles design projects, submitted a report to the East Los Angeles Planning Commission analyzing the Project's lack of compliance with even the most basic architectural variety requirements of the Specific Plan. The Real Parties offered nothing in rebuttal.

122. At the hearing before the East Los Angeles Planning Commission, the President of the Commission conceded that he did not care much for the Project's design, but then he shrugged his shoulders saying "we're not in a design excellence competition here tonight." However, that was prejudicially incorrect. The Specific Plan sets standards that the discretionary decision maker was obligated to enforce. Having no expert evidence showing the Project complied with Specific Plan architectural standards, and having refused to even engage the subject at the only appeal hearing where it was supposed to be addressed, the City also failed to proceed in accordance with law.

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123. Finally, the record contains evidence of other failures to comply with project requirements related to the trees and other biological issues. In failing to enforce these provisions of the Specific Plan the City failed to proceed in accordance with law.

FOURTH CAUSE OF ACTION

(Violation of California Due Process/Fair Hearing)

124. Petitioner re-alleges and incorporates by reference the preceding paragraphs of this Petition.

Principles of Due Process and Fair Hearing Applicable to Administrative Land Use Appeal Hearings

125. The California Supreme Court observes that "The requirement for a fair hearing under section 1094.5 is grounded in due process." *Today's Fresh Start, Inc. v. Los Angeles County Office of Educ.* (2013) 57 Cal.4th 197, 215. Quasi-judicial proceedings where an administrative agency exercises discretion to apply laws, regulations and policies to a specific set of facts, and such adjudication makes binding determinations that affect legal rights of individuals, require due process of law under both the U.S. and California Constitutions. *Londoner v. Denver* (1908) 210 U.S. 373, 385-386 (federal due process required opportunity for an oral hearing before street paving assessment could be levied against affected landowner's property); *Horn v. County of Ventura* (1979) 24 Cal.3d 605, 610 ("we consider whether approval by defendant county of a tentative subdivision map is an 'adjudicatory' function which, under principles of due process, requires that **both** appropriate notice and an opportunity to be heard be given to persons whose property interests may be significantly affected. We will hold that such approval is 'adjudicatory,' and that rights to prior notice **and hearing** are accordingly invoked.")(Emphasis added.)

126. In the realm of land use and environmental decisionmaking, the California Supreme Court in *Horn* specifically held that landowners within the potential environmental impact area surrounding a proposed development project who could be affected by access,

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traffic and air emissions, were owed constitutional due process rights of notice and a meaningful opportunity to be heard to challenge grant of the applicant's proposed subdivision project and the adequacy of the environmental review. *Horn* at 612-615. The petitioner landowner in the *Horn* case owned an adjacent parcel of land, and was found to have standing to allege that he and all other nearby landowners received no notice or opportunity to be heard. *Id.* at 619 ("the complaint avers that no prior notice or hearing had previously been given to any affected landowner, or to plaintiff or his predecessor.")

127. In analyzing the territorial scope of the right to due process as an affected landowner, the California Supreme Court emphasized that the right to due process expands in land use and environmental matters with the magnitude of the project and its potential impacts on a widening area of affected landowners. *Horn* at p. 618 ("depending on the magnitude of the project, and the degree to which a particular landowner's interests may be affected, acceptable techniques [of notice of a right to be heard] might include notice by mail to the owners of record of property situate within a designated radius of the subject property, or by the posting of notice at or near the project site, or both. Notice must, of course, occur sufficiently prior to a final decision to permit a "meaningful" predeprivation hearing to affected landowners"). Our Supreme Court emphasized the importance of the notice sufficiently prior to the hearing in order to allow affected landowners to prepare evidence and testimony to present to the decision maker so that it would be "meaningful." The larger the project, the larger the number of affected individuals whose property or other substantial rights could be impacted, and such individuals, distinct from others further away from the project site who may only have statutory Brown Act public comment rights, have a constitutionally protected right to appear at the hearing and be allowed meaningful time to present the testimony and evidence they were constitutionally required to be invited by the public agency to have an opportunity to present.

128. In *Horn*, the California Supreme Court specifically observed that in conducting an adjudicatory or quasi-judicial hearing the ability of affected landowners to organize themselves to petition the government, present testimony and evidence, and turn out in numbers

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could shape the ultimate decision. "Resolution of these issues [of the merits of a subdivision map] involves the exercise of judgment, and the careful balancing of conflicting interests, the hallmark of the adjudicative process. **The expressed opinions of the affected landowners might very well be persuasive to those public officials who make the decisions, and affect the outcome of the subdivision process.**" (Emphasis added.) Id. at 615. In other words, in California a "meaningful" hearing is one where the affected landowners, who presumably received a notice of hearing (an invitation to present oral testimony and evidence before a decision is made), is entitled to a meaningful opportunity to be heard at the oral hearing before the public officials and try to affect the outcome of the adjudicative process.

129. In California, such procedural due process is owed not only to landowners but to affected tenants of surrounding properties. *Pillsbury v. South Coast Regional Community* (1977) 71 Cal.App.3d 740, 750-755 (notice required for neighbors of project, not only landowners but also residents whether they own property or not if they could be affected by the project).

130. Just a few months after deciding *Horn*, our Supreme Court held in *People v. Ramirez* (1979) 25 Cal.3d 260, 269 that California due process required a dignitary interest not recognized in federal law: "More specifically, identification of the dictates of due process generally requires consideration of (1) the private interest that will be affected by the official action, (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards, (3) **the dignitary interest in informing individuals of the nature, grounds and consequences of the action and in enabling them to present their side of the story before a responsible governmental official**, and (4) the governmental interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." (Emphasis added.) In recognizing under California law a "dignitary interest," our Supreme Court departed from federal case precedent. California requires adjudicative hearings to be conducted so that persons with constitutional interests at stake are treated with dignity.

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131. The meaning of the dignitary interest is found also in the Ramirez opinion: "[w]e therefore hold that the due process safeguards required for protection of an individual's statutory interests must be analyzed in the context of the principle that freedom from arbitrary adjudicative procedures **is a substantive element of one's liberty**. [Cite omitted.] This approach presumes that when an individual is subjected to deprivatory governmental action, **he <u>always</u> has a due process liberty interest both in fair and unprejudiced decision-making and in being treated with respect and dignity**." *Ramirez* at 268. Our Supreme Court criticized federal constitutional precedents in failing to require treatment of affected persons with dignity: "The federal approach also undervalues the important due process interest in recognizing the dignity and worth of the individual by treating him as an equal, fully participating and responsible member of society. [Citations omitted.] 'For government to dispose of a person's significant interests without offering him a chance to be heard **is to risk treating him as a nonperson, an object, rather than a respected, participating citizen**.' [Citation omitted.] Thus, even in cases in which the decision-making procedure will not alter the outcome of governmental action, due process may nevertheless require that certain procedural protections be granted the individual in order to protect important dignitary values, or, in other words, 'to ensure that the method of interaction itself is fair in terms of what are perceived as minimum standards of political accountability -- of modes of interaction which express a collective judgment that human beings are important in their own right, and that they must be treated with understanding, respect, and even compassion.' [Citations omitted.]"

132. Thus, in assessing whether the procedural process used by a public agency was a "mode of interaction" that meets "minimum standards of political accountability" that assured those with constitutionally protected dignity interests were identified as such, accorded a respectful hearing where they were given a reasonable amount of time to testify and provide evidence/argument, and were in fact respectfully listened to and the decision making was based upon the record and not extraneous matters, a reviewing court must examine the procedural rules and mechanisms in place to enforce this particularized Californian dignitary requirement.

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Beverly Hills, CA 90211

133. Regardless of whatever process a public agency may adopt, it is required to follow it in the conduct of its adjudicatory process. *Layton v. Merit System Commission* (1976) 60 Cal.App.3d 58, 63

134. Both federal and state cases also define an impartial trial as one where the decisionmakers restrict their process to the record and evidence before them, follow the codified process of their own rules, and do not base the decision on information outside the record, including briefings from staff or colleagues lobbying them outside the hearing room. "Due process requires a fair trial before an impartial tribunal. Such a trial requires that the person or body who decides the case must know, consider and appraise the evidence." *Vollstedt v. City of Stockton* (1990) 220 Cal.App.3d 265, 275 citing "'*Hohreiter v. Garrison*, 81 Cal.App.2d 384, 401. . .; *Morgan v. United States*, 298 U.S. 468 . . . .)' (*LeStrange v. City of Berkeley* (1962) 210 Cal.App.2d 313, 325." The U.S. Supreme Court in *Morgan* found the Secretary of Agriculture had not afforded a lawful hearing where he made his decision solely from consultations with subordinates. The *Vollstedt* court cited and summarized "[t]he fundamental principle that 'the one who decides must hear'" as set forth in Morgan: "The court noted that the 'hearing' is designed to afford the safeguard that the one who decides shall be bound in good conscience to consider the evidence, to be guided by that alone, and to reach his conclusion uninfluenced by extraneous considerations which in other fields might have play in determining purely executive action. The 'hearing' is the hearing of evidence and argument. If the one who determines the facts which underlie the order has not considered the evidence or argument, it is manifest that the hearing has not been given." *Vollstedt* at 275 analyzing *Morgan*.

135. Procedural due process in the administrative setting requires that the hearing be conducted " ' "*before a reasonably impartial, noninvolved reviewer*." ' " *Nasha v. City of Los Angeles* (2004) 125 Cal.App.4th 470, 483, citing *Gai v. City of Selma* (1998) 68 Cal.App.4th 213, 219 (italics added). "[B]ias -- either actual or an "unacceptable probability" of it -- alone is enough on the part of a municipal decision maker is to show a violation of the due process right

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Beverly Hills, CA 90211

to fair procedure. "A biased decisionmaker is constitutionally unacceptable." *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 559.

136. "To establish an unfair hearing based upon must establish "'an unacceptable probability of actual bias on the part of those who have actual decisionmaking power over their claims.' (*BreakZone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1236.) A party seeking to show bias or prejudice on the part of an administrative decisionmaker is required to prove the same 'with concrete facts: [b]ias and prejudice are never implied and must be established by clear averments.'" (*Id.,* at p. 1237; accord *Hongsathavij v. Queen of Angels etc. Medical Center* (1998) 62 Cal.App.4th 1123, 1142.

137. These federal and California principles, embedded in the fair hearing requirement of California law, when applied to the facts set forth in this Petition, compel a conclusion that the affected landowners and land use appellant before the City Council were all denied a fair hearing and an order setting aside the December 1, 2021 project approvals and requiring the conduct of a constitutionally proper hearing is required to vindicate the fair hearing requirement

Neither The East LA Planning Commission or PLUM Committee Land Use Hearings Complied With California Due Process or Fair Hearing Requirements.

138. The record contains extensive public land use hearing deficiencies, including restrictive document submission rules for the area planning commission that prejudicially impaired the ability of the Petitioner to present evidence and its case before the planning commission.

139. In order to prepare for the area planning commission appeal hearing, the City compiled a mailing list of property owners and tenants within an impact radius around the project site and also used an interested persons list for everyone who previously asked to be on the mailing list for items concerning this Project.

140. As previously set forth in detail, the City's pattern and practice to drafting numerous City appeal ordinances, including the CEQA Appeal ordinance to make City officials

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Beverly Hills, CA 90211

believe they could lawfully exclude mailing written notice of the quasi-judicial CEQA appeal hearing to all persons within the potential impact area of the project resulted in the City failing to send such notices. This is ironic because the City possessed in its file a mailing list of persons within the radius of the Project site and list of interested persons, and based upon the wording of LAMC section 11.5.13D, chose to not send written notice of the land use appeal hearing under CEQA. This was a failure to proceed in accordance with law.

141. Petitioner was entitled to be treated with dignity as a coequal participant in the land use appeal process under the Supreme Court's *People v. Ramirez* case. But given the existence of the undisclosed pre-PLUM process detailed previously, City officials casually and routinely treat every land use appellant, including Petitioner in this case, by discussing the appeal and the City Councilmember's position outside the hearing of the land use appeal. One indication of an unconstitutional bias is for decision makers to make up their minds as to the outcome of the land use appeal before entering the hearing room. Here, the existence of the pre-PLUM process demonstrates that there exists an institutionalized bias against respecting the integrity of the land use appeal process, so much so that City officials, and it is a great many of them, participate in a routine and daily violation of the opening meeting law to exchange comments and the position of the Councilmember, including the position of the Councilmember in this case. Accordingly, the actions of the City violated the California constitutional requirements for fair hearing and the dignity owed to conduct a proper and lawful land use appeal process.

142. Also in violation of California's dignity requirement, the PLUM Committee only permitted Petitioner's counsel 3 minutes to present its appeal. The amount of time afforded to the Petitioner, who has a burden of proof in the hearing, violates the most basic principles of enabling a fair hearing. As the U.S. Supreme Court has observed: "The 'hearing' is the hearing of evidence and argument. If the one who determines the facts which underlie the order has not considered the evidence or argument, it is manifest that the hearing has not been given." *Vollstedt v. City of Stockton* (1990) 220 Cal.App.3d 265, 275 citing *Morgan v. United States*,

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298 U.S. 468. Of course, when the 3-minute limit on "hearing" Petitioner is considered in the context that the PLUM Committee has an institutionalized pre-hearing process to determine the Councilmember's desired outcome of the hearing, and the actual public hearing is like a performance after the dress rehearsal, it is hardly surprising the City Council over the years has cut land use appeal presentation times from 15 minutes, to 10 minutes, to 5 minutes, to now 3 minutes. It shocks the conscious that this passes for a serious land use hearing.

143. For all of the foregoing reasons, the City's action prejudiced the ability of the Petitioner and affected property owners surrounding the Project site from their right to a fair hearing under California principles of due process.

FIFTH CAUSE OF ACTION

(Pattern and Practices That Violate the Specific Plan, Constitutional Rights of Land Use Appellants and Persons Entitled To Notice and To Be Heard)

144. Petitioner re-alleges and incorporates by reference the preceding paragraphs of this Petition

145. There exists a present and ripe controversy between the Petitioner and the City related to the various patterns and practices of the City that result in ongoing failures of the City to comply with the FAR requirements of the Specific Plan.

146. There exists a present and ripe controversy between the Petitioner and the City related to the City's pattern and practice of incorporating into its numerous recent enactments such as RecodeLA, the Density Bonus implementation ordinance, the Tree Protection ordinance, and the CEQA appeal ordinance, systemic and ongoing violations of the constitutional rights of property owners and tenants impacted by the projects, like the Project in this case, from being able to file appeals as an aggrieved party and from receiving adequate notice of hearings and a right to be heard with dignity.

147. There exists a present and ripe controversy between the Petitioner and the City related to the City's pattern and practice of creating and operating a massive pre-PLUM process

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To carry out this undisclosed process, extensive taxpayer funded staff and other resources are expended to conduct a system where City officials casually and routinely exchange comments and positions of City Councilmembers via their deputies, pre-PLUM meetings, PLUM notes prepared by the CLA, and a PLUM meeting script all in violation of the constitutional rights of land use appellants and persons with constitutional rights to the dignity of a property conducted land use appeal hearing.

148. As to each of these patterns and practices, Petitioner is entitled to an order from this Court declaring such patterns and practices in violation of law, and enjoining further pursuit of such policies and practices.

NOTICE OF COMMENTCEMENT OF CEQA PROCEEDING

149. Petitioner performed all conditions precedent to filing this action by complying with the requirements of Public Resources Code §21167.5 in filing notice of this action on July 7, 2023. Attached hereto as Exhibit A is a true and correct copy of the Notice of Intent to File CEQA Petition ("Notice"). This Notice was mailed to the City Clerk for the City via United States Mail. The Notice was also delivered to the City Clerk via electronic mail.

150. On July 7, 2023, Petitioner served the California Attorney General with notice of the commencement of this lawsuit, together with a true and correct copy of this petition. A copy of such notice, without copy of this lawsuit, is attached to this Petition as Exhibit B and is incorporated herein by this reference. Such notice satisfies Petitioner's duties under Public Resources Code section 21167.7 and California Code of Civil Procedures section 388.

PREPARATION OF THE RECORD

151. Pursuant to Public Resources Code, section 21167.6(b)(2), Petitioner elects to prepare the record of proceedings in this action. Concurrently with this Petition, Petitioner is filing a notice of its election to prepare the administrative record. A copy of that election is attached as Exhibit C.

Channel Law Group, LLP
8383 Wilshire Blvd., Suite 750
Beverly Hills, CA 90211

Channel Law Group, LLP
8383 Wilshire Blvd., Suite 750
Beverly Hills, CA 90211

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays for relief as follows:

1. For alternative and peremptory writs of mandate, commanding Respondent to

   a) Vacate and set aside approvals of the Project.

   b) Prepare and certify a legally adequate environmental review for the Project.

2. For a stay, temporary restraining order, preliminary injections, and permanent injunctions prohibiting any actions by Respondent until Respondent has complied with all applicable state, federal and local laws and the requirements of CEQA.

3. For declaratory and/or injunctive relief to bar the City from further carrying out the patterns and practices the Court determines to be in violation of law.

4. For costs of the suit.

5. For attorneys' fees pursuant to Code of Civil Procedure section 1021.5 and

6. For such other and further relief as the Court deems just and proper.

Dated: August 7, 2023

By: _____
Jamie T. Hall
CHANNEL LAW GROUP, LLP
Attorneys for Petitioner Crane Boulevard Safety Coalition

Channel Law Group, LLP
8383 Wilshire Blvd., Suite 750
Beverly Hills, CA 90211

VERIFICATION

I am a member of Crane Boulevard Safety Coalition and I am authorized to execute this verification on behalf of petitioner. I have read the foregoing Verified First Amended Petition for Writ of Mandate and am familiar with its contents. The facts recited in the petition are true and of my personal knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: August 7, 2023

By: _____
Mark Kenyon
Crane Boulevard Safety Coalition

Channel Law Group, LLP
8383 Wilshire Blvd., Suite 750
Beverly Hills, CA 90211

EXHIBIT LIST

Exhibit No.	Exhibit
A.	Notice of Intent to File CEQA Petition
B.	Notice to California Attorney General
C.	Notice of Election to Prepare Administrative Record

Channel Law Group, LLP
8383 Wilshire Blvd., Suite 750
Beverly Hills, CA 90211

Exhibit A

Channel Law Group, LLP

8383 Wilshire Blvd.
Suite 750
Beverly Hills, CA 90211

Writer's Direct Line: (310) 982-1760
jamie.hall@channellawgroup.com

JULIAN K. QUATTLEBAUM, III
JAMIE T. HALL *
CHARLES J. McLURKIN

*ALSO Admitted in Texas

July 7, 2023

VIA ELECTRONIC AND U.S. MAIL

City of Los Angeles - City Clerk
200 N. Spring Street
3rd Floor, Room 395
Los Angeles, CA 90012
clerk.plumcommittee@lacity.org

Re: Notice of Intent to Commence CEQA Action and Proceeding; Development Project Located at 464-466 Crane Boulevard, Los Angeles, CA; DIR-2020-427-SPP-1A; ENV-2020-428-CE; CF 22-0163

Dear City Clerk:

PLEASE TAKE NOTICE, under California Public Resources Code section 21167.5, that Petitioner, Crane Boulevard Safety Coalition ("Petitioner"), intends to immediately file a Petition for Writ of Mandate ("Petition") under the provisions of the California Environmental Quality Act ("CEQA") against the City of Los Angeles ("City" or "Respondent"). The Petition will be filed in Los Angeles County Superior Court and will allege, inter alia, that the City incorrectly determined that the proposed development project located at 464-466 Crane Boulevard, Los Angeles, CA ("Project") was exempt from CEQA. Among other things, the Petition will request that the court direct the City to vacate and rescind the project approvals, the determination that the project is exempt from CEQA and to otherwise comply with CEQA. The Petition will seek Petitioner's cost and attorneys' fees.

Sincerely,

Jamie T. Hall
Attorney for Petitioner

Channel Law Group, LLP
8383 Wilshire Blvd., Suite 750
Beverly Hills, CA 90211

Exhibit B

Channel Law Group, LLP

8383 Wilshire Blvd.
Suite 750
Beverly Hills, CA 90211

Main Line: (310) 347-0050
Fax: (323) 723-3960

JULIAN K. QUATTLEBAUM, III
JAMIE T. HALL *
CHARLES J. McLURKIN

Writer's Direct Line: (310) 982-1760
jamie.hall@channellawgroup.com

*ALSO Admitted in Texas

July 7, 2023

By U.S. Mail

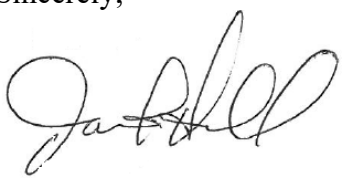
Office of the Attorney General
1300 "I" Street Suite 125
Sacramento, CA 94244-2550

Re: Challenge to Approval of development project located at 464-466 Crane Boulevard, Los Angeles, CA; *Crane Blvd. Safety Coalition v. City of Los Angeles et al.*

Honorable Attorney General Bonta:

PLEASE TAKE NOTICE, under Public Resources Code §21167.7 and Code of Civil Procedure Section §388, that on July 7, 2023, Crane Boulevard Safety Coalition, filed a verified petition for writ of mandate against the City of Los Angeles ("Respondent" or "City") in the Los Angeles County Superior Court. The petition alleges, among other things, that the City incorrectly determined that the proposed development project located at 464-466 Crane Boulevard , Los Angeles, CA ("Project") was exempt from the California Environmental Quality Act ("CEQA"). Please call if you have any questions.

Sincerely,



Jamie T. Hall

Enclosure: Petition for Writ of Mandate

Channel Law Group, LLP
8383 Wilshire Blvd., Suite 750
Beverly Hills, CA 90211

Exhibit C

JAMIE T. HALL (Bar No. 240183)
CHANNEL LAW GROUP, LLP
8383 Wilshire Blvd., Suite 750
Beverly Hills, CA 90211
Telephone: (310) 982-1760
jamie.hall@channellawgroup.com

Attorneys for Petitioner,
CRANE BLVD. SAFETY COALITION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CRANE BOULEVARD SAFETY COALITION, an unincorporated association;

Petitioner,

vs.

CITY OF LOS ANGELES, a municipal corporation;

Respondent.

RACHEL FOULLON; IAN COOPER; ROES 1-25

Real Parties in Interest.

Case No.

PETITIONER'S NOTICE OF ELECTION TO PREPARE THE ADMINISTRATIVE RECORD

[California Environmental Quality Act ("CEQA"), Public Resources Code, sections 2100 et seq.]

Channel Law Group, LLP
8383 Wilshire Blvd., Suite 750
Beverly Hills, CA 90211

Pursuant to Public Resources Code Section 21167.6(b)(2), CRANE BOULEVARD SAFETY COALITION ("Petitioner") hereby elects to prepare the administrative record and the record of proceedings in connection with this action as provided by Public Resources Code Section 21167.6.

Dated: July 7, 2023

By:_____
Jamie T. Hall
CHANNEL LAW GROUP, LLP
Attorneys for Petitioner

Channel Law Group, LLP
8383 Wilshire Blvd., Suite 750
Beverly Hills, CA 90211

Channel Law Group, LLP
8383 Wilshire Blvd., Suite 750
Beverly Hills, CA 90211

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 8383 Wilshire Blvd., Suite 750, Beverly Hills, CA 90211.

On August 7, 2023 I served a copy of the foregoing documents described as **VERIFIED FIRST AMENDED PETITION FOR WRIT OF MANDATE** as follows:

Hydee Feldstein-Soto, City Attorney
Liliana Rodriguez
Marvin Bonilla
Office of the City Attorney
200 North Main Street, City Hall East Room 701
Los Angeles, California 90012
hydee.feldsteinsoto@lacity.org
liliana.rodriguez@lacity.org
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Attorneys for Respondent City of Los Angeles

Ernest J. Guadiana
Elkins Kalt Weintraub Reuben Gartside, LLP
10345 W. Olympic Boulevard
Los Angeles, CA 90064
eguadiana@elkinskalt.com
Attorneys for Real Parties in Interest Rachel Foullon and Ian Cooper

[X] BY E-MAIL: I transmitted true copies of the foregoing document to the persons identified above at the e-mail addresses identified above.

Executed on August 7, 2023 in Beverly Hills, California.

/s/ Jamie T. Hall
JAMIE T. HALL